**THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION NO.4280 OF 1996**

**O R D E R:**

1) Petitioner filed this petition questioning the notice dated 13.10.1995 issued to him under Section 7 of the A.P. Land Encroachment Act, (the Act) by the Mandal Revenue Officer(third respondent) *inter alia,* alleging that he has been in occupation of 70 cents out of Ac 26.25 cents in R.S.No.958 of Dubacherla Village, Nallajerla Mandal, West Godavari District-registered as a tank poramboke, silted up and not being used as a tank from over 30 years, and had raised casurina garden by spending a huge amount and-had also made applications for grant of that land in his favour, being a landless poor person from a backward class community, but inasmuch as he did not support the Sarpanch of Dubacherla Gram Panchayat (5th respondent)-during the elections he bore a grudge against him and prevailed upon the Revenue Divisional Officer ( 2nd respondent) and third respondent to evict him from the land in his possession, ostensibly on the ground that it is required for burial ground purpose, though it is not useful for being used as such and though there is another burial ground and when the officials of the Revenue Department tried to interfere with his possession, he filed O.S.No.49 of 1996 on the file of the Court of the District Munsif, Tadepalligudem, seeking a decree of perpetual injunction, restraining the Collector, West Godavari (1st respondent) and the Executive Officer, Dubacherla Gram Panchayat (4th respondent) from interfering with his possession over the land in his possession and also filed a petition therein, seeking an injunction during the pendency of the suit which is pending, and inspite thereof since respondents are threatening to dispossess him with the help of police, by issuing a notice under Section 7 of the Act to him, only for political reasons, at the instance of

5th respondent, without taking any action against the other encroachers in the said S.Number.

2) Third respondent filed his counter affidavit on behalf of the respondents, *inter alia*, admitting that Ac 26.25 cents in S.No.958 which is a poramboke stood vested in the Gram Panchayat by virtue of Section 85 of the Panchayat Raj Act, and denying the contention of the petitioner that he has been in possession of 70 cents from more than 30 years and alleging that he occupied that land only during 1982-83 and used to raise rainfed crops, and raised cashew plants in 1989 and inasmuch as the Gram Panchayat, by its resolution No.31, dated 15.12.1995 requested him to evict the encroachers in the said S.No., he issued notice under Section 7 of the Act to the petitioner, as his occupation is objectionable and since the land in his possession is required for burial ground purpose for the Gram Panchayat, and disputing the contention of the petitioner that other burial grounds are available in the village and alleging that Ac 1.56 cents in S.No.863 registered as burial ground is being used as a market yard and contending that inasmuch as the petitioner was evicted after service of notice, under Sections 7 & 6 of the Act, and possession was taken from him, the petition is not maintainable as he did not avail the remedy of appeal to the Revenue Divisional Officer and since he had already filed a suit in the civil Court.

3) Along with the writ petition, petitioner filed W.P.M.P.No.5223 of 1996, seeking an interim direction, and accordingly an interim direction not to evict him from 70 cents of land in R.S.No.958 in pursuance of the notice under Section '7' of the Act issued to him by the third respondent, was granted. Third respondent filed W.V.M.P.No.3246 of 1996 to vacate the said interim order. On 30.01.1997, while hearing these Miscellaneous petitions a learned Single Judge directed the Government Pleader to produce the notification if any, showing that Ac 1.56 cents in S.No.863 registered as burrial ground, is notified as market yard, and if there are any other encroachers in S.No.958, and if so, what action is initiated against those

people, and directed the third respondent to file his additional affidavit highlighting those aspects. Pursuant to that order, third respondent filed his additional counter affidavit, swearing to the fact that R.S.No.863, as per records, from 1950 onwards, is being used as market yard and that by resolution No.21, dated 15.07.1958. Fifth respondent Panchayat requested the then District Board, West Godavari, to hand over the market to the Gram Panchayat and again passed a reminder resolution No.14 dated 07.08.1959, and that resolution No.2, dated 24.4.1962 of the 5th respondent Panchayat shows that the market was handed over to it on 01.04.1962 and had unanimously resolved to put it to auction, and thus the land in R.S.No.863, which is notified as burial ground in the Revenue Records, in fact is being used as market yard from more than 35 years, without any notification, and that from out of Ac 26.25 cents in S.No.958, Ac 9.50 cents of land was given to SC., BC., Corporation, West Godavari District, for purpose of construction of poultry complex, wherein poultry sheds and houses to the beneficiaries are constructed and that an extent of Ac 4.20 cents is encroached by villagers long back, by constructing dwelling houses but no action was taken against those encroachers, who have constructed houses and are paying taxes to the Gram Panchayat, as they cannot, as the G.O.s in force be evicted, unless they are provided with alternative sites for their residence, and that besides 70 cents of land occupied by the petitioner in the said S.No.958 an extent of Ac 11.805 cents was allocated by the 5th respondent on the directions of the Collector, to the washermen for their professional work, vide its resolution dated 30.3.1979 and that except Ac 0.70 cents in the occupation of the petitioner, no other vacant site is available for being used as burial ground and that the other lands shown by the petitioner in the village are at a long distance from the village and that there is no water facility to those lands.

4) The contention of the learned counsel for the petitioner is that since the petitioner clearly alleged in his affidavit that he submitted his explanation to the notice under Section ‘7’ of the Act served on him and that he did not receive any

further communication in respect of the said notice and that respondents without serving any notice on the petitioner are trying to interfere with his possession and since 3rd respondent did not specifically deny the said allegation of the petitioner submitting an explanation to the notice under Section 7 of the Act, it should be taken that 3rd respondent admitted to the petitioner submitting his explanation to the notice under Section 7 of the Act, and since notice under Section '6' of the Act is not served on the petitioner, the procedure being adopted by the respondents to evict the petitioner from the land in his possession, at the behest of the Sarpanch of the 5th respondent Gram Panchayat, is against all canons of justice and so, petitioner is entitled to the relief sought.

5) The contention of the learned Assistant Government Pleader is that since the petitioner who is served with the notice under Section-6 of Act, failed to vacate the land, it was taken possession of by the 3rd respondent before the mediators and since petitioner did not avail the remedy of appeal available to him under the Act, he is not entitled to any relief.

6) On my direction the learned Assistant Government Pleader produced the relevant file. It shows that petitioner was served with notice under Section 7 of the Act on 28.10.1995. In fact petitioner admitted receipt of the notice under Section 7 of the Act. In reply to the contention of the learned Assistant Government Pleader that petitioner did not send a reply to the notice under Section 7 of the Act the contention of the learned counsel for the petitioner is that copy of the document dated 28.02.1996, filed as a material paper along with the writ petition, is the copy of the reply sent by the petitioner to the notice under Section 7 of the Act. I am unable to agree with the said contention in view of the contents in the said document dated 28.2.1996. Moreover when the petitioner by the notice under Section 7 of the Act was asked to submit an explanation within seven days from the date of service of the

notice, petitioner sending a reply to the notice on 28.2.1996, when he was served with the notice on 28.10.1995 i.e., about four months after service of the notice, cannot be treated as a reply to the notice under Section 7 of the Act. It should be remembered that the specific case of the respondents is that petitioner was service with notice under Section 6 of the Act in the last week of December 1995, for his failure to send reply to the notice under Section 7 of the Act. In the document dated 28.2.1996 relied on by the learned counsel for the petitioner it is stated as follows:

7) The file produced by the learned Assistant Government Pleader contains a document dated 09.01.1996, which is a copy of the representation of the petitioner to the first respondent marked to the third respondent. In that representation also petitioner stated that on 03.01.1996, V.A.O., (Munsif) R-1 (Revenue Inspector) and others woke him up and stated to him that loan applied for by him is sanctioned and obtained his thumb impressions on some papers, without giving any papers to him and that on the next day, i.e., 04.01.1996, the President of the Gram Panchayat, Executive Officer of the Gram Panchayat and other Officers came with coolies and removed the fencing of his land and since it may cost about Rs.1,000/- for refencing appropriate action may be initiated against the erring officials since he came to know on enquiry that his thumb impressions were taken by playing fraud with an intention to use the land in his possession as burial ground. In view thereof it is easy to see that on 09.01.1996 itself petitioner is aware that an order of eviction was passed against him.

8) The file produced by the learned Assistant Government Pleader shows that notice under Section 6 of the Act, signed by 3rd respondent on 29.1.1992, was served on the petitioner in the presence of A.Satyanarayana and M.Venkateswararao, (mediators) directing him to vacate the land within 5 days from the date of service of that notice. Since the representation dated 9.1.1996 addressed

by the petitioner to the Collector referred to above and the document dated 28.2.1996 produced by the petitioner as a material paper along with the writ petition, show that his fingerprints were obtained from him on some documents on 3.1.1996, it can be taken that the finger print on the reverse of the notice under Section 6 of the Act, in the file, is that of the petitioner. But this petition is filed by the petitioner questioning the notice under Section 7 of the Act, when a notice under Section 6 of the Act directing him to vacate the premises within 6 days from the date of receipt of that notice. For that reason only petitioner cannot be granted the relief sought in this petition.

9) The learned counsel for the petitioner referring to the representations said to have been made by the members of the Panchayat, alleging some irregularities against the 5th respondent with regard to passing of the resolution relating to the request for grant of site for a burial ground, etc., contended that the malafides of the Sarpanch can be seen therefrom. He relied upon several documents and third party affidavits produced by the petitioner in that connection. In my considered opinion, all those documents are not very relevant for the purpose of disposal of this petition, because the resolution of the Gram Panchayat and its validity are not the subject matter of dispute in this writ petition, and since this petition is filed questioning the show cause notice under Section 7 of the Act. When petitioner admittedly filed a civil suit questioning the very same notice under Section 7 of the Act his invoking jurisdiction of this Court, for the same purpose is but an abuse of process of Court.

10) The contention of the learned counsel for the petitioner against the person manning the post of the 5th respondent need not be considered because the person manning that part is not made a party to this petition by his name. Similarly the fact that respondents 4 to 8 have not filed their counter affidavits in this petition, has no relevance because, the grievance of the petitioner is against the third respondent, who issued the notice under Section 7 of the Act.

11) Petitioner who failed to send reply to the notice under Section 7 of the Act issued to him, and who had already filed a suit questioning the said notices cannot be granted any relief. Hence, the writ petition is liable to be dismissed.

12) As a matter of concession, petitioner is permitted to file an appeal against the order under Section 6 of the Act passed against him to the second respondent, within a period of one month from today, who shall dispose of the same on merits. Status quo as on today shall continue for one month. No costs.

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C.Y.SOMAYAJULU J.,

Dt.08.11.2005

c.c. in one week

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